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Guarantee Criteria--Structured Finance

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***(Editor's Note:** This article published on May 7, 2013, has been superseded by "Guarantee Criteria," published Oct. 21, 2016.)*

1. Standard & Poor's Ratings Services is publishing its global criteria for assessing guarantees in structured finance. We are publishing this article to help market participants better understand our approach to reviewing legal risks in structured finance ratings from a global perspective. This article is related to our criteria article "Principles Of Credit Ratings," which we published on Feb. 16, 2011.

SCOPE OF THE CRITERIA

2. Standard & Poor's is publishing these global criteria to provide the market with a description of the methodology it uses to assess guarantees used in structured finance transactions. These criteria do not apply where Standard & Poor's has published jurisdiction- or asset-specific criteria that discuss methodology used to assess guarantees used in structured finance transactions. In such cases, the relevant jurisdiction- or asset-specific criteria shall be applicable.

SUMMARY OF THE CRITERIA

3. This article discusses the elements that Standard & Poor's typically considers in assessing whether structured finance transactions that use guarantees as a form of credit enhancement shift the evaluation of creditworthiness from the primary obligor (the guaranteed entity) to that of the guarantor.

4. The criteria contained herein do not represent a departure from our existing views. Rather, in this article, Standard & Poor's is setting out a general methodology for assessing guarantees in structured finance. Readers are also directed to Standard & Poor's separate articles discussing criteria applicable to structured finance transactions in specific jurisdictions or on discrete topics, where applicable, which may provide greater detail on how the general methodology described in this article may be applied in those contexts. The criteria as set out in this article are not intended to be read as being prescriptive but rather as providing a general methodology that guides Standard & Poor's in considering legal issues we view as relevant to the credit analysis of structured finance securities.

IMPACT ON OUTSTANDING RATINGS

5. We do not expect any outstanding ratings to be affected.

EFFECTIVE DATE AND TRANSITION

6. These criteria are effective immediately.

METHODOLOGY

Guarantee Criteria

7. Often, credit support is provided to a securitization structure through a guarantee or other, similar irrevocable and unconditional payment obligation. The guarantee criteria are used to assess whether a guarantee should be viewed as shifting the evaluation of creditworthiness from the primary obligor (the guaranteed entity) to that of the guarantor.

8. Standard & Poor's typically considers the following criteria before giving credit to the rating on the guarantor in place of the rating on the guaranteed entity.

9. In structured transactions that use guarantees as a form of credit enhancement, Standard & Poor's typically considers the extent to which:

- The guarantee is one of payment and not of collection. In other words, the guarantee should be a promise by the guarantor to pay the guaranteed obligation rather than merely a promise by it to pay any deficiency remaining after the beneficiary has exhausted all of its remedies against the collateral and the primary obligors.
- The guarantor agrees to pay the guaranteed obligations on the date due and waives demand, notice, marshaling of assets, etc.
- The guarantor's obligations under the guarantee rank pari passu with its senior unsecured debt obligations.
- The guarantor's right to terminate or amend the guarantee is appropriately restricted.
- The guarantee is unconditional, irrespective of value, genuineness, validity, or enforceability of the guaranteed obligations. The guarantor waives all other circumstances or conditions that would normally release a guarantor from its obligations. The guarantor also waives its rights of set-off, counterclaim, etc.
- In connection with lease transactions, the guarantee also provides that--in the event of a rejection (or similar concept, such as repudiation or rescission) of a lease in a bankruptcy or insolvency proceeding--the guarantor will pay the lease payment, notwithstanding the rejection and as though the rejection had not occurred.
- The guarantee provides that it reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of the primary obligor's bankruptcy or insolvency.
- The holders of the rated notes are beneficiaries of the guarantee.

10. For transactions where the guarantor's obligations under the guarantee may be owing to a party in another jurisdiction, Standard & Poor's may also ask how the risk of any potential withholding tax with respect to cross-border payments by the guarantor is addressed.

RELATED CRITERIA AND RESEARCH

- "Principles Of Credit Ratings," Feb. 16, 2011

These criteria represent the specific application of fundamental principles that define credit risk and ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as Standard & Poor's Ratings Services' assessment of the credit and, if applicable, structural risks for a given issuer or issue rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.